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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,444	08/23/2001	Gary Greenfield	SRIIP037	2212
22434	7590	06/20/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP			HAYES, BRET C	
P.O. BOX 70250			ART UNIT	
OAKLAND, CA 94612-0250			PAPER NUMBER	

3644

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/938,444

Applicant(s)

GREENFIELD ET AL.

Examiner

Bret C. Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Observations

1. Claim 1, line 2, Claim 18, line 4, and Claim 19, line 2, it has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform and it does not constitute a limitation in any patentable sense (*In re Hutchinson*, 69 USPQ 138);

Claim 9, line 1, It has been held that the recitation that an element is “capable of” perform a function is not a positive limitation but only requires the ability to so perform and it does not constitute a limitation in any patentable sense (*In re Hutchinson*, 69 USPQ 138);

Claim 13, line 2, It has been held that the functional “whereby” statement does not define any structure and accordingly cannot serve to distinguish {*In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957)};

Further, Claim 19, line 19, “agrees” should be --degrees--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 – 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 1, 18 and 19 recite the limitation “severely mitigated” (examiner’s emphasis). The term “severely” is a relative term which renders the claims indefinite. The term “severely” is not

Art Unit: 3644

defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The limitation "mitigated" in the claims has been rendered indefinite by the use of the term "severely".

5. Further, Claims 1 and 18 recite the limitation "said lining" in lines 8 and 10, respectively. There is insufficient antecedent basis for this limitation in the claim. Examiner notes that it is a *means for lining* which has been previously recited in the claim. Also, there should be at least a comma (,) preceding the recitation, for clarity.

6. Claim 8 recites the limitation, "said inner containment vessel further comprises a lining material", which is unclear. Is this in addition to the *means for lining* previously recited or is this the means for lining as previously recited?

7. Claim 13 recites the limitation "said lever" in line 2. There is insufficient antecedent basis for this limitation in the claim. Examiner notes that it is a *lever arm* which has been previously recited in line 1 of the claim.

8. Claims 16 and 20 recite the limitation "the unit" in lines 3 and 2, respectively. There is insufficient antecedent basis for this limitation in the claims. Further, the claims each recite the limitation "chemical or biological agents...are completely contained within the unit [sic]", which is unclear as the claims previously recite the limitation "debris, blast pressure, and fireball...are safely contained *or severely mitigated*" (examiner's emphasis). If debris, blast pressure and fireball are **not completely** contained, but rather, only **severely mitigated**, chemical or biological agents cannot then be completely contained. Can they?

9. Any unspecified claim is rejected as being dependent upon a rejected base claim.

Art Unit: 3644

Allowable Subject Matter

10. Claims 1, 18 and 19 would appear to be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

11. Claims 2 – 17, 20 and 21 would also appear to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record neither discloses nor fairly teaches the combination as claimed, including an outer containment vessel including a single outer access port and an inner containment vessel including a single inner access port, the ports being rotatably brought into alignment with each other and taken out of alignment with each other via a means for rotating, and a means for lining the inner containment vessel such that an explosive device is at least partially suspended within the inner containment vessel.

13. This statement is not intended to necessarily state all the reasons for allowance or all the details why the claims are allowed and has not been written to specifically or impliedly state that all the reasons for allowance are set forth (MPEP 1302.14).

14. Further, based upon any amendment, an update to the prior art search will be conducted. The apparent allowability of the subject matter may then be withdrawn based on the findings of that search.

Art Unit: 3644

Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (571)272 – 7045. The fax number is (703) 872 – 9306.

bh

14-Jun-05


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER